



COLUMNISTS

What the provinces gain

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The biggest beneficiaries of the 18th Amendment would be the federating units and this should be made known to the people of these units, otherwise the reform measures will not receive the kind of public support that is needed for their successful implementation. Let us take a look at the salient features of the deal offered to the federating units.

The constitutional reform package not only meets the federating units' demand for abolition of the Concurrent Legislative List it also allows the units some say in respect of a few matters that have so far been in the Federal List. For instance, census, major ports, use of the police force belonging to one province in another province and estate duty on property have been shifted from Part I of the Federal List to Part II. Since all matters listed in Part II of the Federal List fall under the purview of the Council of Common Interests the provinces will be able to discuss matters related to these new entries.

The change proposed in Article 172 makes the federating units joint and co-equal owners with the federal government of mineral oil and gas within the provinces or the territorial waters adjacent thereto. At present ownership of these resources vests in the federal government alone.

The amendments proposed in Articles 128 of the constitution envisage a most welcome increase in the powers of the provincial assemblies. At present a governor can extend the life of his ordinance by reissuing it before its normal life (three months) expires. This privilege is to be transferred to the provincial assemblies. Only they can extend the life of a gubernatorial ordinance for 90 days and this only once. Any curtailment of the powers of the governor, who is essentially the centre's agent, is a step towards increased provincial autonomy.

Similarly, an amendment proposed in Article 232 will make it impossible to proclaim emergency on the ground of internal disturbance beyond the power of a provincial government to control, because any such action will require a resolution by the provincial assembly.

The provincial assemblies will also get powers to intervene if the provincial governments entrust any of their functions to the federal government. All such transactions will have to be ratified by provincial legislatures.

The provincial assemblies are fortunate that unlike the members of the National Assembly, who must elect a Muslim as the prime minister, they will be free to elect any member (not necessarily a Muslim) to be their chief ministers.

Two proposed changes in the provisions of the chapters on Fundamental Rights and Principles of Policy are specifically in the interest of the federating units. An amendment proposed in Article 27 (Fundamental Rights) will enable the parliament to make laws in order to redress a province's grievance regarding its under-representation in the services of Pakistan.

The proposed addition of a paragraph to Article 38 (Principles of Policy) is likewise significant. It says: "the shares of the provinces in all federal services, including autonomous bodies and corporations established by, or under the control of, the federal government, shall be secured and any omission in the allocation of the shares of the provinces in the past shall be rectified." The proposed increase in the number of days the Senate should meet (110 days instead of 90 days) and the bar on issuance of presidential ordinances while the Senate is in session enlarge the provinces' right to oversee the federation's working.

Following the enactment of the 18th Amendment no province will have as its governor a person belonging to another province. This policy has been adopted in the post-Musharraf period and it will now get the essential constitutional cover.

Significant changes have been proposed in the articles related to the Council of Common Interests. The composition of the Council (Article 153) remains more or less unchanged — the prime minister and his three nominees represent the centre and the four chief ministers will represent the provinces. But the changes proposed in Article 154 are quite important. The council shall be constituted within 30 days of the prime minister's swearing-in; the council will have its own permanent secretariat (and not merely a desk in the cabinet division) and it shall meet at least once in 90 days.

An amendment to Article 157 will oblige the federal government to consult the provincial government concerned before taking a decision to build or sanction a hydro-electric power station in any province.

Article 160 is to be amended to ensure that the share of a province in an NFC award will not be less than the previous award. Equally important is the new facility offered to the provinces to raise domestic or international loans.

That all these benefits to the provinces fall short of the expectations of the people of the federating units is no secret. But if politics is the art of the possible it is necessary to realise the limitations of the present parliament. A parliament truly representative of the pluralist society that Pakistan is perhaps could have offered the federating units a better deal. To persuade the present lawmakers to offer the provinces more than the National Assembly did vide the 1973 Constitution is quite an achievement. The issue of securing the units the maximum possible autonomy must wait till the people can elect their genuine representatives or find a way to change the polity through a revolution.

Quite a few parties/groups in the less populous federating units may consider it politically expedient to denounce the 18th Amendment. They have a right to take a stand on the principle of self-determination. Instead of quarrelling with them the federal government should make serious efforts to remove the barriers to a normal discourse with the people of the provinces. They must be enabled to believe that this constitutional reform will not be subverted the way the 1973 Constitution was no sooner than it was signed.

The federal government is likely to discover that implementation of the Raza Rabbani committee's reforms will be more difficult than their formulation. And its hardest job is to convince the people, especially in Balochistan, that constitutional guarantees are not only sacred, they are also enforceable.

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